

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARTIN JONSSON

Appeal No. 2006-0937
Application 10/367,289¹

ON BRIEF

Before GARRIS, OWENS and KRATZ, Administrative Patent Judges.
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal which involves claims 1-4 and 7.²

The subject matter on appeal relates to a motor vehicle impact absorbing beam. With reference to Figure 6 of the appellant's drawing, the beam comprises two flanks 13, 14 and a central portion 36 disposed between the two flanks. Further

¹ Application for patent filed February 14, 2003.

² These claims correspond to the appellant's election without traverse of the species shown in Figure 6 of the drawing for this application.

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details regarding this appealed subject matter are set forth in representative claim 1, the sole independent claim before us, which reads as follows:

1. A motor vehicle impact absorbing beam, characterized in that, at least along a major part of its length, the beam comprises two flanks (13, 14) and has a cross-sectional form which is catenary in configuration, corresponding substantially to the form of a free-hanging chain suspended at its ends only, and a central portion (36) disposed between the two flanks (13, 14).

The reference set forth below is relied upon by the examiner in the § 102 rejection³ before us:

Odan et al. (Odan)	5,865,496	Feb. 2, 1999
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Claims 1-4 and 7 are rejected under 35 U.S.C. § 102(e) as being anticipated by Odan.⁴

³ As a matter of clarification, a prior rejection under the second paragraph of 35 U.S.C. § 112 has been implicitly withdrawn by the examiner as reflected by the record as a whole and especially by the supplemental examiner's answer mailed October 31, 2005 which presents only the § 102 rejection as applicable to the appealed claims (see pages 2 and 3 thereof).

⁴ The appealed claims will stand or fall together (e.g., see page 5 of the brief filed March 22, 2004). Accordingly, in assessing the merits of the rejection before us, we will focus on claim 1 which is the sole independent claim on appeal.

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Rather than reiterate the respective positions advocated by the appellant and the examiner, we refer to the several briefs and answers which have been presented in the record of this appeal.

OPINION

We will sustain this rejection for the reasons set forth in the supplemental examiner's answer mailed October 31, 2005 and for the reasons set forth below.

We agree with examiner's finding that appealed independent claim 1 is anticipated by Figure 1 of Odan which displays a motor vehicle impact absorbing beam or impact bar 11 comprising an inner base 11b.

The appellant argues that the examiner's § 102 rejection is improper because it "addresses only one of the three components [which comprise Odan's impact bar], namely 11b" (supplemental reply brief, filed October 3, 2005, page 5). This argument is not well-taken. The independent claim on appeal is directed toward a motor vehicle impact absorbing beam and recites that "the beam comprises two flanks . . . and a central portion . . . disposed between the two flanks." The appellant's argument lacks persuasive merit because the claim term "comprises" does not exclude the other components (i.e., 11a and 11c) of patentee's

impact bar 11. Thus, the absence of any discussion regarding these other components simply is not relevant to the propriety of the examiner's rejection.

The appellant additionally argues, "[a]ssuming arguendo that components 11a and 11b of the Odan et al patent have a cross section which is catenary in configuration, neither of these components define a central portion disposed between two flanks, as expressly recited in appealed independent Claim 1."

(Supplemental reply brief, filed November 16, 2005, pages 2-3). This is incorrect. In the supplemental answer mailed October 31, 2005, the examiner has fully explained (on page 4 with reference to an attachment of an annotated copy of Odan's Figure 1) that inner base 11b of patentee's impact beam or bar 11 includes "two flanks (A to B, C to D). . . and a central portion (Fig. 1) disposed between the two flanks." Therefore, contrary to the appellant's argument, component or inner base 11b in fact does include a central portion disposed between two flanks, that is, the central portion extending between B and D of the annotated Figure 1 copy.

In light of the foregoing, it is our ultimate determination that the examiner has established a prima facie case of anticipation which the appellant has failed to successfully rebut

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with argument or evidence in opposition thereto. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). We hereby sustain, therefore, the examiner's § 102 rejection of argued claim 1 as well as non-argued claims 2-4 and 7 as being anticipated by Odan.

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with appeal may be extended under 37 CFR § 1.136(a)(I)(iv)(2005)._____

AFFIRMED

BRADLEY R. GARRIS)	
Administrative Patent Judge)	
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TERRY J. OWENS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
PETER F. KRATZ)	
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CKP/sld

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